IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 349 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Applicant(s)
Versus
NITINKUMAR NAVINCHANDRA SHAH & 5 - Respondent(s)

==========

Appearance :
MS ARCHANA RAVAL AGP for Applicant(s) : 1,
MR DK MODI for Respondent(s) : 1 - 2.
MR MD MODI for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3 - 6.

==========

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 05/07/2007

ORAL JUDGMENT

1. This Criminal Revision Application filed under Section 397 read with Section 401 of the Criminal Procedure Code has been preferred by the State of Gujarat challenging the judgment and order dated 7.3.1998 passed by the learned Chief Judicial Magistrate, Bhavnagar, in Criminal Case No.4639 of 1997 whereby the learned Magistrate allowed the application Exhibit 4 of the present respondents and ordered dropping of the proceedings in the said Criminal Case and acquitted the present respondents for the offences under Section 2(9) (c), Rule 32 (e) and 7 (2) punishable under Section 16 (a) (a) (i) of the Prevention of Food Adulteration Act, 1954.

2. Short facts leading to the filing of the present Revision Application are that the complainant – Food Inspector filed complaint against the present respondent for offences punishable under Section 16 (a) (a) (i) of the Prevention of Corruption Act, 1954 (for short 'the Act') for contravention of Section 2 (9) (c) Rule 32(e) and 7 (2) of the Prevention of Food Adulteration Rules, 1955 (for short 'the Rules'), in the Court of the learned Chief Judicial Magistrate, Bhavnagar. It is the case of the complainant-Food Inspector that he is working as such with the Food and Drugs Control Administration; that on 21-1-1997 at 16.15 hrs. he visited the firm of the respondent-Nitinkumar Navinchandra Shah who was dealing in sale and storage of food articles. There he met Nitinkumar N. Shah and Kiritbhai S. Shah and in their presence on inspecting the food articles, purchased fifty pouches of Manekchand Panmasala each weighing 2 grams towards samples. After completing all the necessary formalities as required under law, the Food Inspector had forwarded 6

packets in three lots of 2 packet properly packed and sealed to the Public Analyst as also to the Local Health Authority. Upon receipt of the report from the Public Analyst, it was found that the samples in all the boxes as well as the pouches of Manekchand Panmasala, Batch number, lot number and Code number were not indicated, and was declared misbranded. Before the learned Magistrate, the present respondents appeared and filed an application Exh.4 requesting the Court to drop the proceedings in Criminal Case No.4639 of 1997 and to acquit him of the charges on the ground that there is no contravention of the said Act and the Rules. The Food Inspector submitted his written reply Exh.6 contesting the application.

3. After considering the written reply Exh. 6 filed by the complainant-Food Inspector and after hearing the arguments of the learned Counsel for the parties, the learned Magistrate has come to the conclusion that there is no breach of Rule 32 (e) of the Rules, and therefore, passed the judgment and order as stated in paragraph 1 of this judgment, which is the subject matter of challenge in the present Revision Application.

4. Heard learned A.P.P. Ms. Archana Raval for the applicant – State of Gujarat. The respondents though duly served has neither appeared in person nor through his advocate.

5. It is settled proposition of law that Rule 32 (e) of the Rules are mandatory in nature. It is not in dispute before the Court below or even here

before me that distinctive batch number, lot number or code number was mentioned in the packets of samples of Manekchand Panmasala in question either in numerical or in alphabets or in combination the numerical or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words Batch No., or batch or lot no. or lot any distinguishing prefix as required under Rule 32 (e) of the Food Adulteration Rules, 1955. It is also not in dispute that mode and manner of collecting samples and forwarding the same to the concerned authorities as described and prescribed under the law have not been followed by the complainant-Food Inspector. It seems that the learned trial Judge has even without recording necessary evidence has arrived at an erroneous finding in acquitting the respondent-accused. In that view of the matter, there being breach of the provisions contained in Rule 32 (e) of the said Rules, the judgment and order of acquittal cannot be sustained.

6. In the result, this Criminal Revision Application is allowed. The judgment and order dated 7.3.1998 dropping the proceedings in Criminal Case No.4639 of 1997 and acquitting the present respondents-accused passed by the learned Chief Judicial Magistrate, Bhavnagar in Criminal Case No.4639 of 1997 are hereby quashed and set aside. The trial Judge concerned shall proceed with the Criminal Case against the present respondents on merits and in accordance with law. Rule is made absolute accordingly.

(M.D. SHAH, J.)

ynvyas